

This 9th day of August 2018, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

PROCEDURAL HISTORY

1. On September 28, 2015, Defendant Shawn D. Daniels was indicted on six counts of drug and firearm offenses. If convicted of all the drug and firearm offenses, Daniels was facing statutory penalties of over 100 years of incarceration. Daniels, who was eligible to be sentenced as a habitual offender, was actually facing even greater penalties than the statutory penalties of over 100 years of incarceration.

2. Daniels filed a motion to suppress the evidence discovered during the execution of the search warrants of his residence and vehicle. The motion was heard on March 4, 2016 and denied that same day.¹

3. Following the denial of Daniels' suppression motion, on March 7, 2016, the parties entered into a plea agreement. Daniels agreed to plead guilty to Possession of a Firearm by a Person Prohibited ("PFBPP") and to be sentenced as a habitual offender. As part of the plea agreement, the State agreed to dismiss all the other charges in the indictment. The State agreed to recommend a sentence of 15 years at Level V.

4. The Superior Court conducted a "very thorough plea colloquy" during which Daniels represented, *inter alia*, that he was waiving all trial and appellate rights by entering the plea.² The Superior Court, after a thorough line of questioning, accepted Daniels' plea as being entered into knowingly, voluntarily and intelligently.³

¹ Superior Court Docket No. 14- Order Dated March 4, 2016 denying Daniels' motion for suppression of evidence.

² *Daniels v. State*, 2017 WL 2812926 (Del. 2017).

³ March 7, 2016 Plea Transcript, at pg. 11.

5. After the entry of the plea, but before sentencing, Daniels moved to withdraw his plea. He alleged that “he did not understand that entering the guilty plea would waive his appeal rights,” and he wished to appeal the denial of his motion to suppress.⁴ In the same motion, Daniels’ counsel moved to withdraw as counsel.⁵

6. On July 29, 2016, the Superior Court denied Daniels’ motion to withdraw his guilty plea and granted the motion to withdraw as counsel.⁶

7. After Daniels’ counsel was permitted to withdraw, a Public Defender was appointed to represent Daniels. On September 9, 2016, the Superior Court sentenced Daniels as a habitual offender to thirteen years and six months of Level V incarceration followed by eighteen months of Level III probation.

8. Daniels filed a direct appeal to the Delaware Supreme Court. Daniels claimed that he should have been permitted to withdraw his plea. On June 28, 2017, the Delaware Supreme Court determined that Daniels’ claim was without merit and affirmed the judgment of the Superior Court.⁷

9. On direct appeal, the Delaware Supreme Court concluded that Daniels had entered into the plea knowingly, intelligently and voluntarily.⁸ The Delaware Supreme Court concluded that the Superior Court judge clearly informed Daniels that by pleading guilty he was giving up his right to appeal as well as his trial rights.⁹ The Delaware Supreme Court also concluded that Daniels had represented to the Superior Court at the time of his

⁴ Superior Court Docket No. 17- April 19, 2016 Motion to Withdraw of Guilty Plea and to Withdraw as Counsel; See also, *Daniels v. State*, 2017 WL 2812926, *2 (Del. 2017).

⁵ Superior Court Docket No. 17- April 19, 2016 Motion to Withdraw of Guilty Plea and to Withdraw as Counsel; See also, *Daniels v. State*, 2017 WL 2812926, *2 (Del. 2017).

⁶ Superior Court Docket No. 31.

⁷ *Daniels v. State*, 2017 WL 2812926 (Del. 2017).

⁸ *Id.*

⁹ *Id.*

plea that he was satisfied with his lawyer's representation and that his lawyer had fully advised him of his rights.¹⁰

10. The Delaware Supreme Court reiterated that a defendant's statements to the Superior Court during a guilty plea colloquy are presumed to be truthful. In the absence of clear and convincing evidence to the contrary, a defendant is bound by his answers on the truth-in-sentencing form and his answers to the judge's questions during the plea colloquy.¹¹ The Delaware Supreme Court held that Daniels had not met his burden to show that his answers to the questions on the plea form and during the colloquy were not truthful. The Delaware Supreme Court concluded that Daniels was bound by the answers he gave when he entered his plea, and that none of the factors which would justify allowing Daniels to withdraw his plea were presented in this case.¹²

11. On November 21, 2016, Daniels filed a motion for reduction/modification of sentence in the Superior Court.¹³ By Order dated August 18, 2017, the Superior Court denied Daniels' motion for modification of sentence. The court stated that the sentence was appropriate for all the reasons stated at the time of sentencing.¹⁴

12. Daniels filed a request seeking reconsideration of the Superior Court's denial of his motion for modification of sentence. By Order dated October 31, 2017, the Superior Court denied Daniels' motion for reconsideration.¹⁵

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.* at 3.

¹³ Superior Court Docket No. 43- Superior Court Order dated August 18, 2017.

¹⁴ Superior Court Docket No. 43- Superior Court Order dated August 18, 2017.

¹⁵ Superior Court Docket No. 49- Superior Court letter/Order dated October 31, 2017.

FACTS

13. The facts, as set forth by the Delaware Supreme Court on Daniels' direct appeal¹⁶, show that in August of 2015, two detectives with the Wilmington Police Department received information from a past proven reliable confidential informant that Daniels and his brother were selling heroin out of 812 West 7th Street in the city of Wilmington.¹⁷

14. In September of 2015, the detectives used a confidential informant to purchase illegal drugs from Daniels and his brother. The detectives also learned that Daniels was prohibited from possessing a firearm due to several prior felony convictions. They also learned that Daniels possessed and drove a teal Mercury Grand Marquis.¹⁸

15. The detectives applied for and received a search warrant for the 812 West 7th Street residence. When they executed the warrant, they found U.S. currency, 350 bags of heroin, marijuana, a digital scale and small baggies associated with the packaging and sale of drugs, a firearm magazine clip, and receipts from Wal-Mart for ammunition.¹⁹

16. The detectives then obtained a search warrant for the Grand Marquis in which they found 112 bags of heroin, multiple papers belonging to Daniels, and a stolen .45 caliber firearm.²⁰

17. Daniels was then arrested and charged with multiple drug and firearm offenses. While in custody after his arrest, Daniels admitted that he used the Grand Marquis on a daily basis and that the heroin and firearm found in the car belonged to him.²¹

¹⁶ See, *Daniels v. State*, 2017 WL 2812926, *1 (Del. 2017).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

18. Daniels plead guilty to PFBPP. The firearm at issue was the firearm found in Daniels' Grand Marquis and to which he had admitted belonged to him. All the other drug and firearm charges in the indictment were dismissed as part of the plea agreement.

DANIELS' RULE 61 MOTION

19. Daniels filed the subject Rule 61 motion on February 8, 2018.

20. On February 12, 2018, Daniels filed a motion for appointment of counsel. On March 6, 2018, Daniels filed a motion to amend his Rule 61 motion. By Order dated March 23, 2018, Daniels' motion for appointment of counsel was denied, his motion to amend was granted, and a briefing schedule was established for the briefing of this motion.²²

21. The record was enlarged and Daniels' trial counsel were directed to submit Affidavits responding to Daniels' ineffective assistance of counsel claims. Daniels' trial counsel up to the plea, and trial counsel appointed after the plea, both filed their respective Affidavits responding to Daniels' ineffective assistance of counsel claims. Thereafter, Daniels filed a reply thereto.²³

22. Following briefing on the motion, by letter dated June 19, 2018, the court requested that the State provide copies of the search warrants which were executed on the premises and the vehicle at issue.²⁴ The State provided the requested information.²⁵

23. In the subject motion, Daniels claims that his plea was not voluntarily, intelligently and knowingly given. He claims that he was not fully informed prior to the entry of his plea. Daniels asserts that he was not provided with Rule 16 discovery and/or other discovery such as medical lab reports and a chain of custody report (Counts One and Two).

²² Superior Court Docket No. 56- Order dated March 23, 2018.

²³ Super.Ct.Crim.R. 61(g).

²⁴ Superior Court Docket No. 60- letter dated June 19, 2018

²⁵ See, June 19, 2018 email response with attachments.

He claims his plea was coerced. (Count 5). He claims his counsel was ineffective for not performing an investigation of available defenses (Count 3), for not investigating whether the confidential informant was credible (Count 6), and for depriving Daniels of his right to subpoena witnesses and cross-examine them (Count 6). Finally, Daniels claims that the search warrant for the premises was defective (Count 4), and that as a result of the defective search warrant, the search warrant of his vehicle was not justified (Count 7).

24. It is important to note that Daniels pled guilty to PFBPP stemming from the firearm found in his vehicle, which he admitted to the police was his firearm, and it was undisputed that he was a person prohibited from possessing a firearm. It is also important to note that Daniels derived a significant benefit from pleading guilty to just that one count, since he was facing a number of additional drug and firearm charges and significantly more jail time if convicted of all the charges in the indictment.

25. The claims raised in the subject motion are procedurally barred, waived and without merit.

Daniels' Claims Are Procedurally Barred

26. Prior to addressing the substantive merits of any claim for postconviction relief the court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61.²⁶ If a procedural bar exists, then the claim is barred, and the Court should not consider the merits of the postconviction claim.²⁷

27. Superior Court Criminal Rule 61(i)(4) precludes Daniels from raising any claims which were already raised and adjudicated in some fashion on Daniels' direct appeal.

²⁶ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

²⁷ *Id.*

Moreover, Superior Court Criminal Rule 61(i)(3) requires that Daniels raise his claims, with the exception of his ineffective assistance of counsel contentions, on direct appeal.²⁸

Daniels' ineffective assistance of counsel claims are not procedurally barred by Rule 61(i)(3) because a Rule 61 motion is the appropriate vehicle for raising these claims.²⁹

28. In the subject motion, all of Daniels' claims, with the exception of his ineffective assistance of counsel claims, are procedurally barred on the grounds that they were already raised and adjudicated on direct appeal, or that Daniels was required to, but failed to, raise any such claim raised herein on direct appeal.

29. The Delaware Supreme Court has already held that Daniels entered into his guilty plea knowingly, intelligently and voluntarily. The Delaware Supreme Court already held that Daniels is bound by the answers he gave when he entered his plea, which included that he knew he was waiving his rights associated with trial and appeal, that he was satisfied with his lawyer's representation of him, and that his lawyer had fully advised him of his rights.³⁰ The Delaware Supreme Court concluded that there was no justification presented in this action which would warrant allowing Daniels to set aside his plea.³¹

30. To the extent that Daniels claims that his plea was not voluntary, and claims errors, deficiencies and other wrongdoing that are not ineffective assistance of counsel claims, Daniels' claims, with the exception of his ineffective assistance of counsel claims, are procedurally barred.

²⁸ See, *Malin v. State*, 2009 WL 537060, at *5 (Del.Super. 2009); *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

²⁹ *Id.*

³⁰ *Daniels v. State*, 2017 WL 2812926, *2-3 (Del. 2017).

³¹ *Id.*

All of Daniels' Claims Were Waived Upon Entry of His Guilty Plea

31. In addition to some of Daniels' claims being procedurally barred, all of Daniels' claims were also waived upon the entry of his guilty plea.

32. The Delaware Supreme Court on direct appeal has already held that under the circumstances reflected in this record, it is clear that Daniels entered into the plea with full knowledge of the rights he was waiving as a result of pleading guilty to PFBPP.³²

33. The Delaware Supreme Court has already held that Daniels is bound by his answers on the Truth-in-Sentencing Guilty Plea Form and by his answers to the judge's questions during the plea colloquy.³³

34. During the plea colloquy and in the Truth-in-Sentencing Guilty Plea Form, Daniels represented that he read and understood that by pleading guilty he was waiving his constitutional rights: to have a speedy trial by jury; to be presumed innocent until the State proves each and every part of the charges against him beyond a reasonable doubt; to hear and question the witnesses against him; to present evidence in his defense; to testify or not testify; and to appeal, if convicted.³⁴

35. Daniels represented that he understood that he was waiving each and every one of those rights by pleading guilty.³⁵

36. At the time he entered into his plea, Daniels told the Superior Court that he understood the charge against him and the penalty he faced, that he was pleading guilty rather than going forward with a trial on all the charges in the indictment because he was,

³² *Daniels v. State*, 2017 WL 2812926, *2-3 (Del. 2017).

³³ *Daniels v. State*, 2017 WL 2812926, *2-3 (Del. 2017).

³⁴ March 7, 2016 Plea Transcript, at * 6-11; Truth-in-Sentencing Guilty Plea Form dated March 7, 2016.

³⁵ March 7, 2016 Plea Transcript, at * 6-11; Truth-in-Sentencing Guilty Plea Form dated March 7, 2016.

in fact, guilty and that he believed it was in his best interest to do so. He further represented that no one was forcing him to plead guilty.³⁶

37. Daniels also represented that he was satisfied with his defense counsel's representation of him and that he had been fully advised of his rights.³⁷

38. As the Delaware Supreme Court already stated on direct appeal, Daniels is bound by the representations he made on the Truth-in-Sentencing Guilty Plea Form and during the plea colloquy in the absence of clear and convincing evidence to the contrary.³⁸

39. Daniels admitted his guilt to the PFBPP charge for which he pled guilty.³⁹ Only after finding that Daniels' plea was entered into knowingly, intelligently and voluntarily, did the Superior Court accept the plea.⁴⁰

39. Daniels' valid guilty plea waived his right to challenge any alleged errors, deficiencies or defects occurring prior to the entry of his plea, even those of constitutional proportions.⁴¹ Daniels' valid guilty plea waived any right to test the strength of the State's evidence, the right to hear and question witnesses and to present evidence in his own defense, and the right to appeal, if convicted.⁴²

40. All of Daniels' claims presented herein, including those alleging ineffective assistance of counsel, stem from allegations of defects, errors, misconduct and deficiencies

³⁶March 7, 2016 Plea Transcript, at * 6-11; Truth-in-Sentencing Guilty Plea Form dated March 7, 2016.

³⁷March 7, 2016 Plea Transcript, at *11; Truth-in-Sentencing Guilty Plea Form dated March 7, 2016.

³⁸ See, *Evans v. State*, 2016 WL 6196456 (Del.); *State v. Harden*, 1998 WL 735879, *5 (Del.Super.); *State v. Stuart*, 2008 WL 4868658, *3 (Del.Super. 2008).

³⁹ March 7, 2016 Plea Transcript, at * 7.

⁴⁰ March 7, 2016 Plea Transcript, at *11.

⁴¹ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Modjica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

⁴² March 7, 2016 Plea Transcript, at * 6-11; Truth-in-Sentencing Guilty Plea Form dated March 7, 2016.

which existed at the time of the entry of the plea. All of Daniels' claims were waived when he knowingly, freely and intelligently entered his plea.⁴³

Daniels' Claims Are Without Merit

41. In addition to some of Daniels' claims being procedurally barred and all of Daniels' claims being waived, Daniels' claims are also without merit.

42. In order to prevail on an ineffective assistance of counsel claim in the context of a plea challenge, Defendant must demonstrate that (1) his defense counsel's conduct fell below an "objective standard of reasonableness," and (2) the deficient performance prejudiced the defense.⁴⁴ The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable probability that, but for defense counsel's unprofessional errors, the outcome of the proceedings would have been different.⁴⁵

43. In the context of a plea challenge, it is not sufficient for the defendant to simply claim that his counsel was deficient. The defendant must also establish that counsel's actions were so prejudicial that there was a reasonable probability that, but for counsel's deficiencies, the defendant would not have taken a plea but would have insisted on going to trial.⁴⁶ The burden of proving ineffective assistance of counsel is on the defendant.⁴⁷

⁴³ See, *Mills v. State*, 2016 WL 97494, at *3 (Del.); *Day v. State*, 2011 WL 3617797 (Del.) (claim that counsel was ineffective for failing to file a suppression motion was waived when defendant voluntarily entered his guilty plea, since voluntary guilty plea waives any claims of error occurring prior to the entry of the plea); *Hickman v. State*, 1994 WL 590495 (Del.).

⁴⁴ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

⁴⁵ *Id.* at 687-88, 694.

⁴⁶ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Hickman v. State*, 1994 WL 590495 (Del.) (applying *Strickland* to guilty pleas).

⁴⁷ *Oliver v. State*, 2001 WL 1751246 (Del.).

Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.⁴⁸

44. The United States Supreme Court has reiterated the high bar that must be surmounted to prevail on an ineffective assistance of counsel claim.⁴⁹ The United States Supreme Court cautioned that in reviewing ineffective assistance of counsel claims in the context of a plea bargain, the court must be mindful of the fact that “[p]lea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks.”⁵⁰

45. Turning to the subject case, Daniels pled guilty to PFBPP stemming from the firearm found in his vehicle. It is important to emphasize that Daniels admitted to the police, while in custody, that the firearm was his. It was undisputed that he was a person prohibited from possessing a firearm.

46. Although Daniels now complains that his plea was not voluntarily, intelligently and knowingly given because he was not provided with certain discovery, because his counsel did not investigate his defenses, and because he was deprived of evaluating and cross-examining witnesses, Daniels has not shown how any additional discovery or investigation would have improved his defense.

47. Moreover, although Daniels now complains that his plea was not fully informed and was coerced, his present assertions are directly contrary to the representations he made to the court at the time he accepted the plea. At the time of his plea, Daniels represented that that he was fully advised of his rights, of the trial and appellate rights he was waiving

⁴⁸ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁴⁹ *Premo v Moore*, 131 S.Ct. 733, 739-744 (2011).

⁵⁰ *Id.* at *741.

by accepting the plea, that he was satisfied with his counsel's representation of him, and that he was not coerced in any way.

48. Indeed, the record reflects that at the time of the plea, counsel represented that he reviewed the details of the plea with Daniels, as well as the charges and the potential penalties that Daniels was facing by entering into the plea. They reviewed the trial rights that Daniels would be waiving. They weighed the charges, the evidence and also any defenses. They discussed these issues at length.⁵¹ Tellingly, Daniels never refuted any of these representations made by counsel at the time of the plea. On the contrary, Daniels reconfirmed them during the plea colloquy.

49. In his Affidavit in response to Daniels' Rule 61 motion, defense counsel detailed the communications he had with Daniels prior to Daniels decision to take the plea.⁵² Prior to the first case review conducted on November 16, 2015, counsel met with Daniels and reviewed and discussed all the discovery materials provided by the State including the initial crime report, search warrants and affidavits, the Miranda warning form and Daniels' recorded statement.⁵³ During that meeting, they discussed the pending charges, potential penalties, and potential defenses. Based on that meeting, counsel was authorized to pursue a motion to suppress based upon the daytime search warrant being executed prior to 6:00 a.m.⁵⁴

50. Thereafter, defense counsel requested and obtained "a CAD report and WILCOM recording from the execution of the daytime search warrant", interviewed certain of Daniels' family members who were present at the residence during the execution of the

⁵¹ March 7, 2016 Plea Transcript, at pgs. 4-5.

⁵² Superior Court Docket No. 57- Affidavit of counsel in response to Rule 61 motion, at pgs. 1-2.

⁵³ Superior Court Docket No. 57- Affidavit of counsel in response to Rule 61 motion, at pgs. 1-2.

⁵⁴ Superior Court Docket No. 57- Affidavit of counsel in response to Rule 61 motion, at pgs. 1-2.

daytime search warrant, and prepared the suppression motion. Defense counsel provided Daniels with a copy of the suppression motion and the State's response thereto.⁵⁵

51. On February 22, 2016, at the final case review, the State provided Daniels with a plea offer. Defense counsel and Daniels discussed and evaluated the plea and Daniels decided to reject the plea offer. The final case review was postponed until after the Motion to Suppress was decided.⁵⁶

52. On March 2, 2016, defense counsel met Daniels at Howard R. Young Correctional Institution to discuss the suppression motion and the State's response. They again reviewed the discovery materials provided by the State and also reviewed the pending charges and potential penalties. They again discussed potential defenses.⁵⁷

53. On March 4, 2016, the motion for suppression was presented to the Superior Court. That same day the motion was denied.

54. On March 7, 2016, at the final case review the State provided a renewed plea offer, which defense counsel presented to Daniels. During the meeting, Daniels and defense counsel again discussed the State's evidence, Daniels' potential defenses, and the pros and cons of accepting the State's plea offer. Daniels decided to accept the plea offer.⁵⁸

55. During the plea, Daniels indicated that he understood the charges and penalties associated with the plea, that he understood the rights and defenses he was waiving by entering into the plea, that he was not promised anything, nor forced or threatened to enter into the plea, that he believed entering into the plea was in his best interests, that he was

⁵⁵ Superior Court Docket No. 57- Affidavit of counsel in response to Rule 61 motion, at pgs. 1-2.

⁵⁶ Superior Court Docket No. 57- Affidavit of counsel in response to Rule 61 motion, at pg. 2.

⁵⁷ Superior Court Docket No. 57- Affidavit of counsel in response to Rule 61 motion, at pg. 2.

⁵⁸ Superior Court Docket No. 57- Affidavit of counsel in response to Rule 61 motion, at pg. 2.

guilty of the charge for which he was pleading guilty, and that he was satisfied with his lawyer's representation of him in this case.

56. As to the Rule 16 discovery materials supplied by the State in September and October 2015, defense counsel reviewed the materials with Daniels on a number of occasions as identified above.⁵⁹ Even if he was not provided with actual copies of the discovery, Daniels was shown the discovery on a number of occasions. Daniels has not made a showing of how he was prejudiced in any way by being shown the discovery rather than being given actual copies of the discovery. Daniels has not shown how his defense would have improved in any way whatsoever.

57. The record reflects that Daniels was adequately advised of the evidence against him, the charges, the plea offer, and the penalties he would be facing. Any claim that the plea was not informed is belied by Daniels' representations at the time of the plea and is without merit. Daniels' claim that his counsel at the time of the plea was deficient in any respect is without merit and belied by the record.

58. Daniels raises one claim that requires further discussion. Daniels claims that the search warrant for his residence was improperly executed because it was dated August 3, 2015 and not executed until September 4, 2015. It appears, however, that the search warrant was improperly dated August 3, 2015, when it should have been dated September 3, 2015. The number 3 was hand-written and inserted as the day the warrant was submitted, but the month of August had been pre-typed. There is no doubt that the search warrant was actually submitted on September 3, 2015, as evidenced by the Justice of Peace Court stamp that the search warrant had been filed on September 3, 2015 at 12:53 p.m. The Justice of

⁵⁹ Superior Court Docket No. 57- Affidavit of counsel in response to Rule 61 motion, at pgs.1- 3.

Peace Court stamp is on the same page as the date. The search warrant was also signed and dated by the detectives on September 3, 2015, and was signed by the Justice of Peace Court Judge on September 3, 2015 authorizing the issuance of the search warrant. The month of August should have been crossed out and the month of September inserted. However, the correct date of September 3, 2015 was handwritten by both of the detectives when they signed the warrant, and the correct date was handwritten by the Justice of Peace Court Judge when the search warrant was signed.

59. There can be no doubt that the search warrant of the premises was authorized by the Justice of Peace Court Judge on September 3, 2015 at 12:53 p.m. and was executed the following day, on September 4, 2015.⁶⁰ The warrant was executed the day after the search was authorized, September 4, 2015. The search warrant was properly executed the day after it was authorized.

60. Indeed, the Affidavit of Probable Cause filed with the Justice of Peace Court seeking the issuance of the search warrant of the premises provides that “*during the fourth week of August 2015* your affiant received information from a past proven reliable confidential informant. . . .”⁶¹ “Your affiants can truly state that *during the fourth week of August 2015* a confidential source (here after known as C.S.) advised that they purchased heroin on a regular basis. . . .”⁶² “Your affiants can truly state that *during the first week of September 2015* a confidential source (here after known as C.S.) . . .”⁶³

⁶⁰ See, Rule 16 discovery packet provided to Daniels produced to the Superior Court by email dated June 19, 2018, at pages 18-28; See, the Affidavit of Probable Cause attached as Exhibit B to the Justice of Peace Court Complaint and Warrant.

⁶¹ ¶2 of the Affidavit of Probable Cause filed on September 3, 2015 seeking the issuance of the search warrant.

⁶² ¶3 of the Affidavit of Probable Cause filed on September 3, 2015 seeking the issuance of the search warrant.

⁶³ ¶¶4 & 5 of the Affidavit of Probable Cause filed on September 3, 2015 seeking the issuance of the search warrant.

61. The detectives could not have submitted the search warrant on August 3, 2015 because the events given rise to the issuance of the warrant did not even occur until the fourth week of August and the first week of September 2015, as evidenced by the Affidavit of Probable Cause seeking the issuance of the search warrant.

62. Daniels filed a motion to suppress claiming that the search warrant of his residence was not properly executed. Although Daniels did not raise the issue raised herein in his suppression motion, the circumstances giving rise to the issuance and execution of the search warrant was fleshed out at the suppression hearing, and the motion was denied.⁶⁴ The Superior Court concluded that the search warrant was properly executed.⁶⁵

63. Daniels has not established that his counsel was ineffective for not raising this issue in the suppression motion because it does not appear that he would have prevailed on the issue. The search warrant, even though dated August 3, 2015, was not even prepared by the detectives until September 3, 2015, was not filed with the Justice of Peace Court No. 20 until September 3, 2015, and was not signed by the Justice of Peace Court until September 3, 2015. The warrant was executed on September 4, 2015, the day after it was authorized. There was nothing improper as to the execution of the search warrant of the residence.

64. Moreover, the firearm that was the subject of the plea was found in the vehicle, not at the residence. There was never any issue that the search warrant of the vehicle was improper in any respect. The search warrant for the vehicle at issue was prepared and authorized on September 4, 2015. Specifically, it was authorized by the Justice of Peace

⁶⁴ Superior Court Docket No. 14- Order Dated March 4, 2016 denying Daniels' motion for suppression of evidence; March 4, 2016 Suppression Hearing transcript.

⁶⁵ Superior Court Docket No. 14- Order Dated March 4, 2016 denying Daniels' motion for suppression of evidence; March 4, 2016 Suppression Hearing transcript at pg. 48.

Court Judge at 9:09 a.m. on September 4, 2015. It was executed the same day the authorization was obtained.⁶⁶

65. The firearm was found in the vehicle. Daniels admitted the firearm was his. The search warrant of the vehicle was properly issued and executed. Daniels' counsel was not ineffective in his handling of challenges to the search warrants of the premises and the vehicle nor has Daniels shown any actual prejudice as a result thereof.

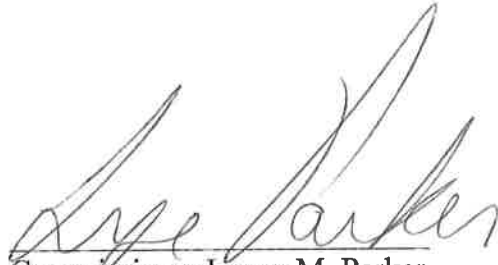
66. At the time of his plea, Defendant represented to the Superior Court that he voluntarily entered his plea and was satisfied with his counsel's representation. Daniels' guilty plea represented a rational choice given the pending charges, the evidence against him, and the possible sentence he was facing. Moreover, Defendant acknowledged that he understood that he was waiving his right to appeal his suppression claims and waiving his right to test the strength of the State's evidence. In the absence of clear and convincing evidence to the contrary, Defendant is bound by his answers on the guilty plea form and by his sworn testimony prior to the acceptance of his guilty plea. Defendant has not sustained his burden of demonstrating that his counsel rendered ineffective assistance in any respect.

67. As discussed above, Daniels' guilty plea was knowingly, voluntarily and intelligently entered. Daniels' claims are procedurally barred, waived and without merit.

⁶⁶ Rule 16 discovery packet provided to Daniels produced to the Superior Court by email dated June 19, 2018, at pages 18-28; The Affidavit of Probable Cause attached as Exhibit B to the Justice of Peace Court Complaint and Warrant.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.



Commissioner Lynne M. Parker

cc: Prothonotary
Kevin J. O'Connell, Esquire
R. Joseph Hrubiec, Esquire